

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 13, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZENON MORALES-CALDERON,

Defendant.

No. 2:22-CR-00148-MKD-1

ORDER FOLLOWING
DETENTION REVIEW
HEARING

MOTION DENIED
(ECF No. 44)

MOTION GRANTED
(ECF No. 45)

On February 8, 2023, the Court held a hearing to consider Defendant ZENON MORALES-CALDERON's opposed Motion to Modify Conditions of Release and unopposed Motion to Expedite, **ECF Nos. 44, 45**. Defendant appeared while in custody assisted by federally certified Spanish interpreter Bea Rump and was represented by represented by Attorney Lorinda Youngcourt. Legal Intern Gloria Herrera supervised by Special Assistant U.S. Attorney Freida Zimmerman represented the United States. U.S. Probation Officer Araceli Mendoza was also present telephonically.

The Court has reviewed Defendant's opposed Motion to Modify Conditions of Release, **ECF No. 44** and unopposed Motion to Expedite, **ECF No. 45**. Specifically, Defendant requests that the Court strike pretrial release Condition No. 16, which provides as follows:

1 (16) Defendant shall participate in the following home
2 confinement program(s):

3 **GPS Monitoring:** Defendant shall participate in a
4 program of GPS confinement. The Defendant shall
5 wear, at all times, a GPS device under the
6 supervision of U.S. Probation. In the event the
7 Defendant does not respond to GPS monitoring or
8 cannot be found, the U.S. Probation Office shall
9 forthwith notify the United States Marshals'
10 Service, who shall immediately find, arrest, and
11 detain the Defendant. The Defendant shall pay all
12 or part of the cost of the program based upon ability
13 to pay as determined by the U.S. Probation Office.

14 Defendant shall report to U.S. Probation in the
15 United States Courthouse upon release to affix the
16 GPS Monitoring.

17 AND

18 **Curfew:** Defendant shall be restricted to his/her
19 residence:

20 every day from 9:00 p.m. to 5:00 a.m.

21 ECF No. 39 at 4.

22 Defendant contends he “has been on supervised release¹ [sic] for almost
23 three months without issue” and he is “paying monthly for the GPS monitoring
24 with funds which could be better spent in paying rent to his family and other
25 expenses.” ECF No. 44 at 3. Defendant asserts that U.S. Probation “has no
26 objection to removal of the conditions.” *Id.*

27 The Government opposes the Court striking the location monitoring
28 condition and the curfew condition. While Defendant characterizes U.S.
Probation’s position as unopposed to Defendant’s motion, the Court understands

¹ Defendant is not on supervised release. Defendant is awaiting trial and is on
pretrial release pursuant to 18 U.S.C. § 3142.

1 U.S. Probation is also not affirmatively advocating for the removal of the location
2 monitoring condition.

3 The Court previously denied the United States' motion for detention, ECF
4 No. 6, and imposed a combination of conditions that the Court believes to be the
5 least restrictive release conditions necessary to reasonably assure the appearance of
6 Defendant as required and the safety of any other person and the community. *See*
7 ECF Nos. 36, 42; *see also* 18 U.S.C. § 3142(c)(1)(B). As Defendant notes,
8 Defendant has been on pretrial release and subject to the above-noted condition,
9 along with various other conditions of release, since approximately November 4,
10 2022, with no violations. ECF No. 39. The Court previously issued a detailed
11 Order explaining the Court's detention analysis. ECF No. 42. The Court may
12 amend the release order to impose additional or different conditions of release at
13 any time. 18 U.S.C. § 3142(c)(3).

14 Here, based on the unique facts of this case, the Court declines to strike or
15 modify release Condition No. 16. In the Court's view, the pretrial release
16 conditions imposed on November 3, 2022, remain the least restrictive release
17 conditions necessary to reasonably assure the appearance of Defendant as required
18 and the safety of any other person and the community. As set forth in the Court's
19 prior Order, the Court has endeavored to fashion release conditions based on an
20 individualized assessment of numerous factors present in this case, including the
21 nature and circumstances of the allegations against Defendant, the weight of the
22 evidence, Defendant's history and characteristics, and the nature and seriousness of
23 the danger posed to the community by Defendant's release. ECF No. 42. Indeed,
24 the Court would be derelict if it did not consider these factors as required by 18
25 U.S.C. § 3142.

26
27 Defendant's counsel, however, takes issue with the Court considering
28 Defendant's ties to a foreign country. The Court reminds counsel that each

defendant presents to the Court with a unique set of facts and circumstances that the Court must evaluate. Here, it is uncontested that Defendant has ties to a foreign country and the Court is required to consider this circumstance along with all other facts and circumstances present in this case. Moreover, in this case, the United States has submitted transcripts of translations of two jail calls wherein Defendant and his brother discuss the possibility of Defendant returning to Mexico in the future and discuss Defendant's family providing him with affirmative support in Mexico to include land, a vehicle, and other support. ECF No. 27-1 at 4; ECF No. 27-2 at 8.

Specifically, in the first jail call on October 19, 2022, the following conversation occurs between Defendant and his brother²:

- BROTHER: Okay, that's good. Keep going and if the situation gets tough well can't change it now. What we are going to do is...I already talked with the guys. Don't get discouraged. I am already buying a plot of land in San Luis so that...Life is hard here its all fucking work here. Fucking north. *We are going to support you with all that we can there if you end up going there.*
- DEFENDANT: In San Luis?
- BROTHER: Yeah, or where you want.
- DEFENDANT: Over there in the (inaudible), dude.
- BROTHER: Yes.
- DEFENDANT: The land is cheap there the one next to Sauces (willow tree).
- BROTHER: *Yeah, I am, uh, we can buy a property over there and I'll send you some so*

² Defendant identified the date and the participants in this call. ECF No. 28 at 4.

that you can buy a pick up so you can be there and with my mom too to the Sauces.

- DEFENDANT: Thank you brother.
- BROTHER: Yeah, no, I already talked to Miko and Ivan and we will help you out for the property worse case. We are going to fight...you put in your papers so you can...you know (inaudible) you know you can't go over there to Mexico.³

- DEFENDANT: Yeah.

ECF No. 27-1 at 4. In the second jail call on October 20, 2022, the following conversation between Defendant and his brother occurs near the end of the call after Defendant initially spoke with his sister-in-law⁴:

- BROTHER: Keep going on. And maybe...if you get out here we will support you and if you go to Mexico over there we will (inaudible) we will support you with everything you need. If you want I can buy you a piece of land and a truck so you can be comfortable everywhere with mom.

- DEFENDANT: Oh, thank you

ECF No. 27-2 at 8.

³ Defendant asserts the inaudible portion of this call alludes to Defendant's deceased brother who Defendant has proffered was murdered in Mexico. ECF No. 28 at 5. Defendant has further proffered that the murder of Defendant's brother is a reason Defendant will not willingly return to Mexico.

⁴ Defendant also identified the date and the participants in this call. ECF No. 28 at 5-6.

1 The above discussions demonstrate that Defendant has not only general ties
2 to Mexico, but also that if Defendant returns to Mexico, Defendant can
3 affirmatively avail himself of land, a vehicle, and other support as directly
4 promised by close family members. Defendant contends that these discussions
5 relate to essentially worst-case scenario plans if Defendant were to be deported to
6 Mexico in the future. Indeed, Defendant emphasizes portions of the same jail calls
7 to demonstrate that Defendant intends to fight the charges he faces and that
8 Defendant hopes to remain in the United States. This view is supported by the
9 comments noted above wherein Defendant's brother states "[w]e are going to
10 fight...you put in your papers so you can...you know (inaudible) you know you
11 can't go over there to Mexico." ECF No. 27-1 at 4. Notably, the Court has agreed
12 with Defendant's interpretation of these statements as suggesting not imminent
13 flight, but rather promises of future support if Defendant is later forced to return to
14 Mexico and the Court has imposed conditions of release that the Court believes are
15 sufficient to both reasonably assure both Defendant's future appearance and the
16 safety of the community. ECF Nos. 39, 42.

17 Nonetheless, the Court must still address the possibility that Defendant may
18 later conclude that flight to Mexico—where he has been promised significant
19 support in the form of land, a vehicle, and other support—is preferable to standing
20 trial in the United States and risking a significant term of imprisonment followed
21 by likely deportation. The Court must also consider that this case carries a
22 potential mandatory minimum term of ten years imprisonment and up to a life term
23 of imprisonment, all followed by a high likelihood of deportation if Defendant
24 were to be convicted of either of the charged offenses. ECF No. 16. Defendant is
25 now aware of the potential penalties in this case and the potential immigration
26 consequences that may follow. Accordingly, to address this rather obvious
27 concern, the Court has imposed the GPS monitoring condition and the curfew
28

1 condition as the least restrictive conditions the Court could impose to both deter
2 and, if necessary, detect flight under the unique facts and circumstances of this
3 case where an incentive to at least consider flight exists and where Defendant is
4 aware that his family is prepared to support him in Mexico. If Defendant's counsel
5 remains of the opinion that a GPS monitoring condition and a curfew condition are
6 inappropriate and unduly burdensome release conditions in a case where
7 Defendant has not only generalized ties to a foreign country but also where
8 Defendant's family has specifically and repeatedly promised that if he later returns
9 to that same country he will have access to land, a vehicle, and other support when
10 Defendant is also facing a mandatory minimum sentence of ten years in federal
11 prison followed by the possibility of deportation from the United States, Defendant
12 is free to seek review of these release conditions by way of 18 U.S.C. § 3145.

13 Accordingly, **IT IS ORDERED** for the reasons stated in this Order and
14 during the hearing:

- 15 1. Defendant's Motion to Expedite, **ECF No. 45** is **GRANTED**.
- 16 2. Defendant's Motion to Modify Conditions of Release, **ECF No. 44**, is
17 **DENIED**.
- 18 3. If a party desires this Court to reconsider conditions of release
19 because of material and newly discovered circumstances pursuant to 18 U.S.C.
20 § 3142(f), that party shall file a four-page motion for reconsideration succinctly
21 stating what circumstances are new, how they are established, and the requested
22 change in conditions of release. The motion shall indicate whether opposing
23 counsel or Pretrial Services object, whether a hearing is desired, and whether a
24 supplemental pretrial report is requested. This Court will treat the motion as
25 expedited and submitted without argument and will set a hearing or issue other
26 orders as may be appropriate.
27
28

1 4. If a party desires that another Court review this order pursuant to 18
2 U.S.C. § 3145, that party shall promptly file a motion for review before the district
3 judge to whom the case is assigned, as further described in the Detention Order
4 Review Protocol published for the Eastern District of Washington. Both parties
5 shall cooperate to ensure that the motion is promptly determined.

6 **IT IS SO ORDERED.**

7 DATED February 13, 2023.





JAMES A. GOEKE
UNITED STATES MAGISTRATE JUDGE